

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

In re: ARC AIRBAGS INFLATORS
PRODUCTS LIABILITY LITIGATION

ALL CASES

Case No.: 1:22-md-03051-ELR

MDL No. 3051

Judge: Eleanor L. Ross

**REPLY REGARDING
PLAINTIFFS' NOTICE OF
SUPPLEMENTAL
AUTHORITY (SOWA) IN
OPPOSITION TO
DEFENDANTS' MOTIONS
TO DISMISS**

Plaintiffs submit this reply to clarify the record with respect to their Notice of Supplemental Authority (Dkt. 300) regarding Judge Geraghty's decision in *Sowa v. Mercedes-Benz Group AG*, No. 1:23-cv-00636-SEG (N.D. Ga. Dec. 31, 2024).

In their response, Defendants take issue with Plaintiffs' statement that the court in *Sowa* "upheld" unjust enrichment claims. Dkt. 307 at 4 (citing Dkt. 300 at 2). Specifically, in the Notice Plaintiffs stated the court in *Sowa* "upheld plaintiffs' nationwide fraudulent omission and unjust enrichment claims" because under Georgia's choice-of-law principles, Georgia law governed those claims "regardless of where each plaintiff was injured." Dkt. 300 at 2. Indeed, Judge Geraghty held that "Plaintiffs' nationwide fraudulent omission and unjust enrichment claims will not be dismissed on choice-of-law grounds." Dkt. 300-1 at 37. Plaintiffs thus argued

“[t]hose principles apply equally here to Plaintiffs’ nationwide fraudulent omission and unjust enrichment claims.” Dkt. 300 at 2 (citing Dkt. 157-1 ¶¶ 408–33; Dkt. 221 at 9).

As Defendants note, the court in *Sowa* ultimately dismissed the unjust enrichment claims (though not the fraudulent omission claims) on the ground that “[t]he existence of valid warranties in this case precludes Plaintiffs’ unjust enrichment claims.” Dkt. 300-1 at 115. But there, the plaintiffs “d[id] not dispute the underlying validity of the contract.” *Id.* In contrast, here, the Court cannot take judicial notice of the Automaker Defendants’ heavily excerpted warranty attachments, “particularly without discovery regarding the warrant[ies] and the circumstances surrounding [the Automakers’] sale of the vehicles to Plaintiffs.” Dkt. 222 at 8. Further, as Plaintiffs have pointed out, the Automakers cannot argue *both* “that the warranties do not encompass the Inflator Defect” *and* that they preclude quasi-contractual claims. Dkt. 221 at 46–47.

At minimum, given the dispute over the warranties’ validity and scope, the Court should permit discovery before it adjudicates the unjust enrichment claim on the merits. *Id.* at 47 (citing *In re Takata Airbag Prods. Liab. Litig.*, 193 F. Supp. 3d 1324, 1344–45 (S.D. Fla. 2016)).

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